

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 28, 2007

**MICHAEL DAVID RUSSELL v. VIRGINIA LEWIS, Warden,  
and STATE OF TENNESSEE**

**Appeal from the Circuit Court for Bledsoe County  
No. 33-2003 J. Curtis Smith, Judge**

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**No. E2005-02644-CCA-R3-HC - Filed July 26, 2007**

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The petitioner, Michael David Russell, appeals the Bledsoe County Circuit Court's dismissal of his petition for a writ of habeas corpus. Because the record and the law support the habeas corpus court's determination that the petitioner's claims were inapt for habeas corpus relief, we affirm the dismissal of the petition.

**Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Michael David Russell, Appellant, Pro Se.

Robert E. Cooper, Jr., Attorney General & Reporter; C. Daniel Lins, Assistant Attorney General; and James Michael Taylor, District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

In March 1986, the petitioner pleaded guilty in the Roane County Circuit Court to a charge of armed robbery, two charges of felony jail escape, and three charges of aggravated rape. Apparently, the State had agreed to abandon its notice to seek enhanced punishment based upon a prior conviction of second degree burglary and of attempt to commit a felony and three prior convictions of grand larceny; the State also agreed to dismiss charges of habitual criminality, burglary, grand larceny, and assault and battery. The petitioner received an effective sentence of 50 years as a Range I, standard offender. No direct appeal was taken. The trial court denied the petitioner's subsequent post-conviction petition that claimed an unknowing guilty plea and ineffective assistance of counsel, and this court affirmed the denial of post-conviction relief. *See Michael David Russell v. State*, No. 171 (Tenn. Crim. App., Knoxville, Dec. 29, 1988).

In May 2005, the petitioner filed a petition for habeas corpus relief. He claimed that his indictments for aggravated rape and for jail escape were void and that he was sentenced in direct contravention of statutory provisions pertaining to prisoners who commit a felony while on parole for a previous felony conviction. The petitioner sought to withdraw his guilty pleas.

On July 18, 2005, the habeas corpus court granted partial relief relative to the convictions of jail escape. The court found that the petitioner pleaded guilty to one count of escape in case number 8277 and one count of escape in case number 8278. In case number 8277, the court found that, while the petitioner and a co-defendant were charged with armed robbery and assault and battery, only the co-defendant was charged with escape. Accordingly, the habeas corpus court vacated the conviction of jail escape in case number 8277. In all other respects, the court denied habeas corpus relief.

The legal issues raised in a habeas corpus proceeding are questions of law, and appellate review of questions of law is de novo. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Habeas corpus relief is available only when the aggrieved party's conviction is void or the sentence has expired. *See Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Id.*; *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in the petitioner's case the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner's jurisdictional issues are limited to the claims that the court was without authority to enter the judgments. *See Anglin*, 575 S.W.2d at 287 ("Jurisdiction' in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned."); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The petitioner's first claim on appeal is that the invalidity of the escape conviction in case number 8277 invalidates the whole of his plea agreement. The petitioner's Roane County plea documents attached to the petition show that the petitioner accepted a one-year sentence for the escape charge in case number 8277 and also a one-year sentence for the escape charge in case number 8278; he agreed that these sentences would be served consecutively to each other and consecutively to sentences of 28 years for armed robbery and 20 years for aggravated rape. By reason of the habeas corpus court's vacating the escape conviction in case number 8277, the defendant's effective sentence has been reduced from 50 years to 49 years.

Contrary to the petitioner's claim, the elimination of one escape conviction and its sentence of one year is not effective to invalidate the remaining convictions, sentences, or provisions of his plea agreement. To be sure, "as a general rule, when a plea agreement includes an illegal sentence, a defendant is entitled to withdraw the guilty plea." *Summers v. State*, 212 S.W.3d 251, 258 (Tenn. 2007) (citing *McLaney v. Bell*, 59 S.W.3d 90, 94-95 (Tenn. 2001)). The "general rule is not without exceptions, however." *Id.* Our supreme court has said, "[An] exception to the general

rule is illustrated by our recent decision in *Smith v. Lewis*. . . .” *Id.* There, despite an illegal sentencing component contained in a plea agreement, the “conviction remained intact because the record of the underlying proceedings did not demonstrate on its face that the illegal provision of early release eligibility was a bargained-for element of [the] plea.” *Id.*

Thus, the presence of a void component of a plea agreement does not necessarily equate to the invalidity of the entire agreement. *See generally Smith v. Lewis*, 202 S.W.3d 124 (Tenn. 2006). The plea documents in the present case show that, in exchange for his package of guilty pleas, the defendant received a *nolle prosequi* on the charges of burglary, grand larceny, assault and battery, and habitual criminality. Despite the presence of prior convictions that warranted a more egregious sentencing range, the agreement provided for release eligibility of 30 percent. Thus, the mainspring of the agreement from the defendant’s point of view appears to be the avoidance of additional convictions, including that of habitual criminality, and the benefit of a 30 percent release eligibility. We view as untenable the claim that a void component – the escape conviction in case number 8277 with its one-year sentence – fouled the remainder of the agreement.<sup>1</sup>

Next, the petitioner claims that his aggravated rape convictions are void because the underlying indictments were duplicitous and that the convictions violate principles of double jeopardy. We disagree, however, that these claims bespeak invalidity of these convictions. Duplicitous in an indictment does not result in a void judgment. *Gary Lynn Vernon v. Jim Dickman*, No. M2003-02268-CCA-R3-HC, slip op. at 2 (Tenn. Crim. App., Nashville, Aug. 9, 2004), *perm. app. denied* (Tenn. 2004). Neither does a violation of principles of double jeopardy result in a void judgment. *See Raymond Rutter v. State*, No. E2003-01386-CCA-R3-PC, slip op. at 3 (Tenn. Crim. App., Knoxville, Apr. 7, 2004).

In his final claim, the petitioner is aggrieved that he was improperly sentenced. He contends that he was on parole for a 1979 conviction and nine-year sentence for armed robbery in California at the time of the commission of the Tennessee offenses for which he was convicted in 1986. He claims that the sentences are void because he was not returned to California to serve the remainder of his 1979 sentence, as was required by Tennessee Code Annotated section 40-28-123(a), which provides in pertinent part:

Any prisoner who is convicted in this state of a felony, committed while on parole from a state prison, jail or workhouse, shall serve the remainder of the sentence under which the prisoner was paroled, or such part of that sentence, as the board may determine before the prisoner commences serving the sentence received for the felony

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<sup>1</sup> In *Smith v. Lewis*, the supreme court looked to the plea document *and* the transcript of Smith’s plea submission hearing to determine that the befouled provision for release eligibility was not prominent in the overall agreement. *Smith*, 202 S.W.3d at 128-29. We look to the plea document in the present case; the transcript of the plea submission hearing was not included as an attachment to the habeas corpus petition. A petitioner seeking habeas corpus relief is obliged to present with his petition any documentation which may support his claim. *See Summers*, 212 S.W.3d at 261.

committed while on parole. If any prisoner while on parole from a state prison, jail or workhouse commits a crime under the laws of another state government or country which, if committed within this state, would be a felony, and is convicted of such a crime, the director of probation and parole shall arrange for the return of the prisoner through the terms of the interstate compact. The board shall require that the prisoner serve the portion remaining of the maximum term of sentence or such part as the board may determine. The board, at its discretion, may recommend to the commissioner of correction the removal of all or any part thereof of the good and honor time and incentive time accrued on the sentence under which the prisoner was paroled.

T.C.A. § 40-28-123(a) (2006).

We agree that the invalidity of the sentence itself, as well as the broader invalidity of the conviction, results in a void judgment and is a sufficient basis for habeas corpus relief. *See Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (stating that a void sentence, as well as a void conviction, may result in a void judgment and be the subject of a habeas corpus proceeding). In *McConnell v. State*, 12 S.W.3d 795 (Tenn. 2000), the supreme court said broadly in addressing plea-bargain negotiations that although issues of “offender classification and release eligibility” are “non-jurisdictional,” *id.* at 798; *see Hicks v. State*, 945 S.W.2d 706 (Tenn. 1997), the sentencing law “establishes the outer limits within which [a sentence may be fashioned], and the courts are bound to respect those limits,” *McConnell*, 12 S.W.3d at 799; *see, e.g., Smith*, 202 S.W.3d at 127-28 (stating that sentencing order that violated mandatory requirement of 100 percent service of sentence contained “on its face an illegal sentence”); *William Boyd v. State*, No. E1999-02179-CCA-R3-PC, slip op. at 5-6 (Tenn. Crim. App., Knoxville, Nov. 6, 2000) (holding that 100 percent release eligibility is beyond the outer limits of release eligibility percentage for even career offenders, and sentence is subject to habeas corpus attack); *see also Stephenson*, 28 S.W.3d at 911-12 (holding first degree murder sentence expressed as life sentence without possibility of parole subject to habeas corpus relief when, at the time of the offense, a life sentence without the possibility of parole was not possible).

We do not agree, however, that Code section 40-28-123(a) marked the “outer limits” of the conviction court’s sentencing jurisdiction. The statute merely directs the director of probation and parole, not the Tennessee sentencing court, to follow the interstate compact in returning the prisoner to another state holding a parole violation claim. The statute does not impinge upon the Tennessee trial court’s sentencing power, and no administrative failure to return the petitioner in this case to California invalidates the sentences or convictions. Thus, the claim is undeserving of habeas corpus relief.

Based upon the foregoing analyses, we affirm the order of the Circuit Court to the extent that it denied habeas corpus relief.

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JAMES CURWOOD WITT, JR., JUDGE